Rev. 02/04/05

AMENDMENT TRANSMITTAL LETTER			Attorney Docket Q02-1032-US1 / 11198.85
Application Serial Number:	Filing Date:	Examiner:	Group Art Unit:
10/072,437	Feb. 5, 2002	Woo, Isaac M.	3654

Invention: EMULATED BACKUP TAPE DRIVE USING DATA COMPRESSION

TO THE COMMISSIONER OF PATENT AND TRADEMARKS:
Transmitted herewith is an amendment in the above-identified application. The fee has been calculated as shown below.

CLAIMS AS AMENDED

	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	NUMBER OF EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	27	MINUS	24	3	$50	$150
INDEP. CLAIMS	3	MINUS	3	0	$200	$

___ Petition is hereby made under 37 CFR 1.136(a) to extend the time for response to the Office Action of _____ to and through _____, comprising an extension of the shortened statutory period of:
___ one month ($120) ___ three months ($1,020)
___ two months ($450) ___ four months ($1,590)

TOTAL ADDITIONAL FEE FOR THIS AMENDMENT	$150

___ Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a verified statement previously submitted.

X A check in the amount of $150.00 is enclosed.

X The commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-1141, pertaining to 1) any filing fees under 37 CFR 1.16 for the presentation of extra claims; 2) any patent application processing fees under 37 CFR 1.17.

X Any additional extension of time required for the timely submission of this paper, the fees for which have not been previously paid, is hereby petitioned for and requested.

3/5/2005
Date

/James P. Broder/
James P. Broder, Reg. No. 43,514

CERTIFICATE OF MAILING: I hereby certify that this correspondence and all correspondence identified as accompanying this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this the 5th day of March, 2005.

/James P. Broder/
James P. Broder, Reg. No. 43,514

Corres. and Mail
BOX AF

EFW AF 3654

PATENT – Reply under 37 CFR 1.116
Expedited Procedure – Examining Group 3654

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Bolt	
Serial No:	10/072,437	Art Unit 3654
Filed:	February 5, 2002	
For:	EMULATED BACKUP TAPE DRIVE USING DATA COMPRESSION	
Examiner:	Woo, Isaac M.	
Attorney Docket:	Q02-1032-US1 / 11198.85	

REQUEST FOR WITHDRAWAL OF FINAL REJECTION AND AMENDMENT AFTER FINAL REJECTION PURSUANT TO 37 C.F.R. § 1.116

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Request for Withdrawal of Final Rejection

The Applicant respectfully submits that the final rejection contained in the Office Action dated January 5, 2005, is premature. The final rejection is believed to be premature because Applicant's Amendment and Response mailed on September 9, 2004 (hereinafter the "September Response") did not necessitate the new grounds for rejection for all of the previously pending claims, as provided below.

CERTIFICATE OF MAILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this the 5th day of March, 2005.

/James P. Broder, Reg. # 43,514/ JAMES P. BRODER, Attorney for Applicant--Registration No. 43,514

The Applicant requests that final rejection of the present application be withdrawn pursuant to MPEP 706.07(a), which states in relevant part:

"Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." (Emphasis added.) MPEP 706.07(a).

Additionally, a "second or any subsequent action on the merits in any application ... should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed. See MPEP § 904 *et seq.* For example, one would reasonably expect that a rejection under 35 U.S.C. 112 for the reason of incompleteness would be replied to by an amendment supplying the omitted element." (Emphasis added).

In particular, claims 1-22 of the present application were rejected in the Office Action dated July 8, 2004, under 35 U.S.C. §§ 101, 112 and 103 grounds. Although the Applicant amended claim 1 to address the §§ 101 and 112 rejections, the Applicant traversed the § 103 rejection. The Applicant stated in the September Response under the section entitled "Rejections Under 35 U.S.C. § 103" that "the rationale and analysis of Woodhill et al. is inaccurate ... and as a consequence, amended claims 1-22 are believed to be allowable because the cited reference does not teach or suggest the features of amended claims 1-22."

The amendment to independent claim 1 was made on procedural grounds only and was non-substantive in nature. Thus, the amendment to claim 1 did not include any modifications that would necessitate a further search by the Examiner. Somewhat similarly, the amendment to independent claim 12 is not believed to result in requiring a further search by the Examiner.

Karasudani et al. (US 6,378,054) and Crighton (US 6,330,570) are newly cited references against claims 1-11. Further, Karasudani et al. is a newly cited reference against claims 12-24. These newly cited references were not relied upon in the

rejection of claims 1-22 in the first Office Action dated July 8, 2004. In summary, neither of the above criteria required to make the office action final under MPEP 706.07(a) have been satisfied. As a result, the instant final rejection is premature.

Additionally, MPEP §706.07(d) provides in relevant part: "If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection." MPEP §706.07(d). Thus, the Applicant respectfully submits that pursuant to MPEP §706.07(a), the instant Final Office Action should be withdrawn in accordance with MPEP §706.07(d).

Alternatively, in the event that the instant request for withdrawal of the final rejection is denied and the finality of this action is maintained, this Amendment and Response to the Final Office Action dated January 5, 2005, should be accorded expedited treatment because it is filed within two months of the date of the Final Office Action. The Applicant has complied with the provisions of 37 C.F.R. § 1.116, and respectfully request that this Amendment and Response be considered after final rejection.